THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION No.25184 of 2005

-

Dated:08.12.2005

Between:

Armoor Gram Panchayat Rep.by its UPA- Sarpanch K.Sanjay,

S/o.Jagjivan singh
Armoor, Nizamabad

..... PETITIONER

AND

The Govt of Ap, rep.by its Principal Secretary, Panchayat Raj Dept,

Secretariat Buildings, Hyderabad, and others.

.....RESPONDENTS

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION No.25184 of 2005

ORDER:

Armoor Gram Panchayat in Nizamabad District filed the instant writ petition in rather peculiar background facts. The case, therefore, throws up an interesting question of law as to whether Panchayat Secretary can ignore a validly passed resolution of the Gram Panchayat and take action contrary to the resolution of the Gram Panchayat, presumably, on the instructions of the District Collector and Divisional Panchayat Officer of the District.

The fact of the matter is not much in dispute. Therefore, after hearing the learned Counsel for the petitioner and the learned Assistant Government Pleader for Panchayat Raj as well as the learned Standing Counsel for the fourth respondent, the matter is being disposed of at the admission stage. The petitioner-Gram Panchayat with a population of 60,000 is characterized as major Gram Panchayat. It appears, on the main street of the Gram Panchayat, known as Angadi Bazar, there were temporary shops put up by private persons, who were paying rent to the Gram Panchayat. So as to augment the panchayat funds, the Gram Panchayat passed a resolution on 07.05.2004 to remove the existing shopping complex and construct a new shopping complex with 37 shops. The Gram Panchayat did so after obtaining necessary sanction from the District Collector as required under the relevant rules and regulations. The complaint now made is that the fourth respondent, who is the Executive Authority of the Gram Panchayat bound by the decisions/resolutions of the Gram Panchayat, acted contrary to the resolution by not implementing it by instigating re-erection of the shops which were removed by the Gram Panchayat enabling it to raise new constructions. It is alleged that the Panchayat Secretary was so emboldened to disobey the Gram Panchayat resolution by explicit instructions from respondent Nos.2 and 3 herein. Therefore, the present writ petition is filed for a declaration and a direction to respondent Nos.2 to 4 to help the petitioner to implement its resolution in accordance with law.

The preliminary submissions were made on 25.11.2005. The learned Assistant Government Pleader for Panchayat Raj and the learned Standing Counsel for Gram Panchayat sought time to get instructions in the matter. On 28.11.2005, when the case was called, the learned Assistant Government Pleader placed before this Court the information he received from the District Collector, Nizamabad, to the effect that the second respondent or the District Collector never instructed the Panchayat Secretary to disobey the resolution passed by the Gram Panchayat. On the contrary, the learned Counsel for the fourth respondent (Standing Counsel for Gram Panchayat) submitted that whatever action that was taken by the Panchayat Secretary was taken in accordance with the instructions issued by respondent Nos.2 and 3 and that the fourth respondent never disobeyed the resolution passed by the Gram Panchayat. The matter was again called today when a submission is made that the Panchayat Secretary will implement the resolution passed by the Gram Panchayat.

A Gram Panchayat was conceived as a Unit of self Government by Article 40 of the Constitution of India. The State was obliged to take steps to organize Village Panchayats and endow them with all powers and validity for the effective functioning as self Government Units. The entrenchment of such a wish in Part IV of the Constitution did not fully help realize the dream of the Constitution makers. Therefore, by the Constitution (Seventy third Amendment Act, 1992) (for short 'the Amendment Act'), Part IX was inserted making it compulsory for every State to constitute Panchayats at Village level, intermediate level and District levels. The constitution, the functioning, the powers and duties of these constitutionally protected units of self Government is now governed by Part IX of the Constitution of India as well as the State Legislature, which is required to be in conformity with the Constitutional provisions. The A.P.Panchayat Raj Act, 1994 (for short 'the Act'), which is a new legislation after coming into force of the Amendment Act delineates the powers and functions of various authorities in the Panchayat Raj at Village level, intermediate level and District level. The Gram Panchayat is ordained to discharge various duties as listed in Section 45 of the Act, and Section 46 of the Act confers power on the Gram Panchayat to achieve the purposes for which it is constituted. The powers of the Gram Panchayat also include the power to take all necessary steps to augment the finances of the Gram Panchayat to meet various expenses in discharge of its functions.

The above brief legal position is reiterated to emphasize the utmost autonomous nature of the functioning of the Gram Panchayat. Indeed the Act has taken considerable care to bestow the Gram Panchayat with almost plenary powers. Executive Authority as defined in Section 2(12) of the Act means the Panchayat Secretary to each Gram Panchayat, who is assigned the responsibility of implementing the resolutions of the Gram Panchayat and the Committees thereof (See Section 32 of the Act), and exercise all powers and perform all functions specifically conferred or imposed on the executive authority under the Act. Under Section 25 of the Act, it shall be within the powers of the sarpanch to exercise controlling authority over the Panchayat Secretary himself starts acting an independent authority ignoring the Gram Panchayat or acts in such a manner that he

prefers the directions of the District Collector/Divisional Panchayat Officer to the directions and orders of the Gram Panchayat, the same would amount to imposing extra legal authority on the Gram Panchayat, which is never the intention of the constitutional amendment or the Act. This Court has strong reason to hold that the Panchayat Secretary is bound to implement all the decisions and resolutions of the Gram Panchayat and he is in no way act as a watchdog at the behest of the District Collector/Divisional Panchayat Officer. The absence of disciplinary power vested in the Gram Panchayat in respect of Panchayat Secretary does not mean that the Panchayat Secretary can consider himself as the superior authority to Gram Panchayat.

The learned Government Pleader submits that at no time, the District Collector or respondent Nos.2 and 3 gave any instructions to Panchayat Secretary to act contrary to the resolution passed by the Gram Panchayat. In view of this, though the learned Standing Counsel for fourth respondent sought to raise a question regarding the instructions of the respondent Nos.2 and 3, this Court is not inclined to go into the same. The learned Standing Counsel for the Gram Panchayat submits that, as noticed above, the fourth respondent does not in any manner come in the way of implementing the resolutions passed by the Gram Panchayat.

In view of the submissions made by the learned Counsel for contesting respondents, the writ petition is disposed of directing the fourth respondent to take all necessary steps implementing the resolution of the Gram Panchayat dated 07.5.2004 in letter and spirit without any let or hindrance as he is duty bound in law. There shall be no order as to costs.

_____

(**V.V.S.RAO,J**)

December 08, 2005.

vs/YS